



L4-5 while lifting mail containers on September 7, 2010. The record indicates that he had prior claims which were denied by OWCP. In OWCP file number xxxxxx935, appellant claimed a back injury caused by occupational disease on or before May 28, 2010. In OWCP file number xxxxxx738, he claimed an occupational disease on or before September 8, 2010.

In a report dated October 7, 2010, Dr. Sameh Yonan, Board-certified in pain medicine, stated that appellant had been off work since September 7, 2010 due to back and leg pain. He advised that appellant had increased low back pain radiating down his left buttocks and leg, and numbness in his right foot.

On February 25, 2011 Dr. Randy B. Reed, a chiropractor, stated that he began treating appellant on June 1, 2010 for complaints of severe low back pain and pain with numbness and tingling radiating down his left leg. Appellant had been doing repetitive lifting at work and began experiencing increasing, severe pain in his back on May 28, 2010. Dr. Reed stated that the pain had progressed to the extent that he could barely walk at the time of his initial visit. Appellant attempted to return to work after being off and allegedly injured his lower back again at work on September 7, 2010. Dr. Reed determined that appellant had sustained a severe disc injury along with lumbar misalignments; *i.e.*, subluxation, with fixations. He stated that appellant underwent a magnetic resonance imaging (MRI) scan on June 10, 2010 which confirmed that he had a lumbar disc protrusion into the lateral recess of L4-5. Dr. Reed opined based on appellant's history, examination findings and MRI scan results that this injury was directly caused by the repetitive lifting at work.

In a February 25, 2011 report, Dr. Anthony F. Berardino, a chiropractor, stated that appellant had complaints of lumbar pain radiating to the left leg, thigh and buttocks. He advised that appellant had alleged that he sustained an injury on May 28, 2010 while loading mail for the letter carriers. This job required constant stooping and lifting mail sacks and buckets. Appellant underwent an MRI scan, which showed bulging discs in his lumbar spine, most prominently at L4-5. He was treated with epidural shots and medication and his condition slightly improved. Appellant attempted to return to work on September 7, 2010 but again experienced shooting pain. The pain returned and increased to the extent that he could not continue his work. Dr. Berardino stated that appellant's job with the employing establishment required constant bending and lifting of mail sacks which occasionally weighed more than 50 pounds. He advised that this persistent, constant stress to the spine could cause the microfibers in the disc to asymptotically tear until a significant disc bulge produced the signs and symptoms appellant was currently experiencing. Based on these facts, Dr. Berardino opined that appellant's signs and symptoms were causally related to the May 28, 2010 work incident.

By decision dated March 18, 2011, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he sustained a lower back injury in the performance of duty on September 7, 2010. By decision dated August 5, 2011, an OWCP hearing representative affirmed the March 18, 2011 decision. Appellant requested reconsideration on March 14, 2012. By decision dated November 6, 2012, OWCP denied modification of the August 14, 2011 decision. In an April 1, 2013 decision,<sup>2</sup> the Board affirmed

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<sup>2</sup> Docket No. 13-308 (issued April 1, 2013).

the November 6, 2012 decision. The complete facts of this case are set forth in the Board's April 1, 2013 decision and are herein incorporated by reference.

In a January 2, 2014 report, Dr. Robert Reppy, an osteopath, stated the history of injury. He advised that appellant began to experience burning pain in his back, left leg, left buttock and thigh which was accompanied by severe tingling in the entire left leg, including the foot and toes. Dr. Reppy diagnosed bulging discs at L2-3, L3-4, and L4-5, as shown by a June 10, 2010 lumbar MRI scan.

On January 29, 2014 Dr. Ramon Berenguer, an internist, stated that he had undertaken a review of all the patient's medical records, including all office visits by different doctors, all diagnoses, all diagnostic tests, and the interpretation of these tests, and all other medical records brought by appellant from other medical providers. He advised that appellant had complaints of low back pain radiating down to the left leg and left foot. Dr. Berenguer rated the pain as typically a 3 or 4 on a scale of 1 to 10; this increased to 9 or 10 on occasion. He advised that an examination of the lumbar spine revealed tenderness on palpation from L2 to S1, with some muscle spasms bilaterally. Dr. Berenguer stated that appellant's range of motion was reduced on flexion from 90 to 45 degrees.

In a February 26, 2014 report, Dr. Berenguer stated that examination of the lumbar spine showed midline tenderness and paravertebral muscles, bilaterally. Appellant continued to show reduced range of motion and was intact neurovascularly at the distally lower extremities. Dr. Berenguer stated that the results of lumbar x-rays showed no acute fracture or dislocation. He diagnosed lumbar disc disease at L2-3, L3-4, L4-5, and left lower extremity radiculopathy. Dr. Berenguer stated that he would continue with the current plan of care. He advised that appellant was improving slowly but was still unable to work due to his injuries. Dr. Berenguer opined that appellant's low back injury, taking into consideration his job and role, were a direct result of the stress caused on his back in the performance of his job.

By letter dated March 14, 2014, appellant, through counsel, requested reconsideration.

By decision dated June 6, 2014, OWCP denied appellant's request for modification.

In a July 24, 2014 report, Dr. Reppy stated that, after appellant was injured in May 2008, he made one attempt to return to work on September 7, 2010; however, this caused the shooting pain down the legs to return with a vengeance, which was sufficiently severe that he became unable to work. Dr. Reppy advised that appellant underwent an MRI scan of the lumbar spine on January 15, 2014 which showed degenerative changes at multiple disc levels and facet arthropathy at L5-S1, with bulging discs at L2-3, L3-4, and L4-5. He diagnosed lumbar disc syndrome and facet arthropathy; he did not believe that appellant had a lumbar sprain/strain. Dr. Reppy stated:

"The chain of causation and mechanism of injury by which the work actions described (stooping and lifting heavy mail sacks) can cause the diagnoses listed above are well known and unfortunately, all too common. The intervertebral discs at all levels of the spine consist of a soft and pliable inner core called the nucleus pulposus which is contained by a ring of more sturdy material called the

annulus. Prolonged stress applied to one of these annulus rings can create small tears within it, disrupting its integrity. Repetitive episodes of the same stress tend to be applied to the same point, resulting in these small tears and cracks enlarging, rather like working a soft piece of metal back- and-forth until it breaks. Eventually the network of cracks in an annulus can link up to create a path of least resistance which lacks the tensile strength of the rest of the ring. At that point the stage is set for just one more, relatively small stressor to “break of the dam” so to speak, and allow the nucleus pulposus to bulge out, rupture, or even herniate. This is precisely what happened in the lumbar spine at the L2-3, L3-4, and L4-5.

“The facet arthropathy is a wear and tear phenomenon that probably developed gradually during the years of appellant worked for the post office. Although the specific lifting incident of May 28, 2010 was not likely to have originated the arthropathy, the repetitive nature and duration of the work actions required by appellant’s occupation were sufficient to have produced the facet arthropathy as a preexisting condition, and thereupon the lifting injury of May 28, 2010 aggravated it.

“It is my medical opinion, within reasonable medical certainty, that appellant’s conditions *i.e.*, the disc disease and the facet arthropathy, were caused by an aggravation or direct result of the strain on the patient’s back as he constantly had to stoop and lift heavy mail sacks as part of his job functions with the [employing establishment] on May 28, 2010.”

By decision dated November 17, 2014, OWCP denied appellant’s request for modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>6</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup>

An award of compensation may not be based on surmise, conjecture, or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

It is uncontested that appellant experienced pain in his lower back while lifting mail containers on September 7, 2010. OWCP has accepted that the incident occurred as alleged. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>10</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the September 7, 2010 employment incident would have been competent to cause the claimed injury.

Following the Board's last review of this case, appellant submitted reports from Drs. Reppy and Berenguer, who diagnosed lumbar disc disease at L2-3, L3-4, L4-5, left lower extremity radiculopathy and facet arthropathy which they generally attributed to employment factors. These physicians, however, did not provide a probative, rationalized opinion regarding whether the September 7, 2010 work incident caused a personal injury. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>11</sup> Most of the medical evidence appellant submitted pertained to appellant's alleged May 28, 2010 injury.

Although Drs. Reppy and Berenguer provided diagnosis of lumbar disc disease at L2-3, L3-4, L4-5, left lower extremity radiculopathy and facet arthropathy they did not submit a report

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<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(e)(e).

<sup>8</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 6.

<sup>11</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

which related these diagnoses to appellant's claimed lower back and sufficiently address how the diagnosed condition was causally related to the September 7, 2010 work incident. In his January 2, 2014 report, Dr. Reppy diagnosed bulging discs at L2-3, L3-4, and L4-5, as shown by a June 10, 2010 an MRI scan. In his January 29, 2014 report, Dr. Berenguer stated that appellant had complaints of low back pain radiating down to the left leg and left foot. He advised in a February 26, 2014 report that the results of lumbar x-rays showed no acute fracture or dislocation. Dr. Berenguer diagnosed lumbar disc disease at L2-3, L3-4, L4-5, and left lower extremity radiculopathy. He stated that appellant's low back injury, taking into consideration his job and role, were a direct result of the stress caused on his back in the performance of his job.

In his July 24, 2014 report, Dr. Reppy primarily focused on whether the May 28, 2010 incident and appellant's lumbar disc syndrome and facet L5-S1 arthropathy were caused or aggravated by work factors, as opposed to whether the September 7, 2010 container lifting incident resulted in a herniated disc injury. He advised that appellant underwent an MRI scan of the lumbar spine on January 15, 2014 which showed degenerative changes at multiple disc levels and facet arthropathy at L5-S1, with bulging discs at L2-3, L3-4, and L4-5. Dr. Reppy diagnosed lumbar disc syndrome and facet arthropathy; he did not believe that appellant had sustained a lumbar sprain/strain injury. He stated that when appellant attempted to return to work on September 7, 2010 he experienced pain down his legs which caused him to be unable to work. Dr. Reppy stated that the facet arthropathy was a wear and tear phenomenon that probably developed gradually during the years he spent working for the employing establishment. He advised that, although the specific lifting incident of May 28, 2010 was not likely to have originated the arthropathy, the repetitive nature and duration of the work actions required by appellant's job were sufficient to have produced the facet arthropathy as a preexisting condition, and consequently the lifting injury of May 28, 2010 aggravated it. Dr. Reppy opined that disc disease and the facet arthropathy were caused by an aggravation or direct result of the strain on the patient's back as he constantly had to stoop and lift heavy mail sacks as part of his job functions with the employing establishment on May 28, 2010.

The reports from Drs. Berenguer and Reppy did not sufficiently explain how, medically, appellant would have sustained a low back injury while lifting containers on September 7, 2010. They did not adequately describe appellant's September 7, 2010 incident and how it would have been competent to cause the claimed conditions. The opinions of Drs. Berenguer and Reppy regarding causal relationship are of limited probative value for the further reason that they did not provide adequate medical rationale in support of their conclusions.<sup>12</sup> It is unclear if Dr. Reppy had an accurate history as he attributed appellant's low back symptoms to years of stooping and lifting heavy mail sacks in his job with the employing establishment and his previous May 28, 2008 injury, not the alleged September 7, 2010 work incident.<sup>13</sup> He stated that appellant did not sustain a sprain or strain injury but opined that he developed disc disease and facet arthropathy caused by an aggravation or direct result of the strain on the patient's back; this was the accumulation of constant stooping and lifting heavy mail sacks as part of his job functions with the employing establishment, which resulted in the May 28, 2010 injury.

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<sup>12</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>13</sup> *See Geraldine H. Johnson*, 44 ECAB 745 (1993).

Dr. Reppy's reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's September 7, 2010 work incident and his claimed lower back injury.

On appeal, appellant's counsel contends that appellant has provided sufficient factual and medical evidence to support a causal relationship between appellant's injuries and his work duties. He argues that, regardless of whether appellant filed the injury claim as a result of the May event or the September aggravation, he sustained an injury as a direct result of his workplace functions with the employing establishment and his claim should not be denied due to a "technical error." Counsel notes that appellant began to feel pain while performing the same duties in late May as he did on September 7, 2010, but did not immediately consider the cause of the injury. He contends that, where the relative circumstances, such as repetitive stooping/bending and heavy lifting, strongly suggest a causal relationship and where the medical evidence also supports a causal relationship, appellant has met his burden of proof. Counsel states that because Dr. Reppy referenced a return of appellant's symptoms in September 2010 which originated from work duties in May 2010, it was possible that appellant could or should have filed an occupational disease claim, since Dr. Reppy opined that his injuries had worsened over time due to his long-term work duties. He argues that, while submission of an incorrect form is a "technical error," it is improper to deny a case on this basis. Counsel contends that appellant has presented sufficient evidence to demonstrate that he was injured at the workplace due to repetitive lifting, which took place in September as well as May and that the evidence he submitted at least raises an uncontroverted inference of causal relationship. The Board, however, does not accept his contentions. As noted above, appellant filed a traumatic injury claim for an alleged September 7, 2010 work injury, and it is his burden to submit rationalized medical opinion evidence sufficient to establish that the alleged September 7, 2010 employment incident would have been competent to cause the claimed work injury. His prior claims for May 2010 and September 2010 occupational disease are separate claims. For the reasons set forth above, appellant has failed to meet this burden. The Board will affirm OWCP's November 17, 2014 decision.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the September 7, 2010 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained his lower back injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a lower back injury in the performance of duty on September 7, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board